



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: 4-S Construction, Inc.

File: B-248090

Date: June 16, 1992

Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for the protester.
Timothy A. Chenault, Esq., Department of Transportation, United States Coast Guard, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest agency improperly failed to permit low bidder to correct its bid is denied where the agency reasonably concluded that the bidder did not provide clear and convincing evidence (1) of its intended bid or (2) that as corrected its bid would remain low and the amount of the intended bid falls within a narrow range of uncertainty.

DECISION

4-S Construction, Inc. protests the United States Coast Guard's decision denying 4-S's pre-award request to correct a mistake in its low bid, submitted in response to invitation for bids (IFB) No. DTCG40-92-B-3EFK01, for the upgrade of mechanical shops at the United States Coast Guard Yard, Baltimore, Maryland.

We deny the protest.

The IFB requested fixed-price, lump-sum bids for a base contract and five additive work items for work to be performed in accordance with detailed specifications and drawings that were part of the solicitation. At the January 8, 1992, bid opening, the Coast Guard received 13 bids ranging in price for the base bid plus all 5 additive items from 4-S's low bid of \$2,534,200 to \$3,992,720. The second low aggregate bid was \$2,627,000.

For additive item 1 (two toilet/locker rooms and a janitor's closet room), the item in issue in this protest, the bids ranged from 4-S's low bid of \$25,600 to \$165,000. The second lowest bid for additive item 1 was \$105,000. Based on the difference in prices for additive item 1 between the

low bid of 4-S and the other bids received, the contracting officer suspected that there was a mistake in 4-S's bid. As a result, by letter of January 9, 4-S was requested to review and confirm its bid. 4-S initially confirmed its bid. During a subsequent telephone call, however, 4-S asserted that its bid for additive item 1 was mistaken, and on January 31, 4-S sent the Coast Guard a letter requesting that it be permitted to modify its bid for additive item 1.

4-S stated that in pricing its bid for additive item 1, it had failed to include two subcontractor quotations, one for mechanical work (including plumbing, heating, ventilation, and air conditioning) in the amount of \$61,200, and one for \$14,010 for tile work. 4-S submitted copies of the quotations which it allegedly intended to use for these items and requested that it be permitted to increase its bid for additive item 1 by \$75,210 to \$100,810.

The Coast Guard initially denied 4-S's claim because 4-S did not provide clear and convincing evidence of its intended bid. The firm provided the agency with only raw subcontractor quotations for the allegedly omitted work rather than its complete workpapers. The agency found that without all the workpapers 4-S used to prepare the bid, it was unable to determine if the quotes submitted by 4-S were the quotes that 4-S actually used to prepare its bid. In addition, the Coast Guard was concerned that without these workpapers, it could not determine the percentage markup for overhead and profit that 4-S would have included in its bid. The agency noted that with overhead and profit added to the bid, 4-S could have been displaced as the low bidder.

Subsequently, and while the protest was pending, 4-S sent a revised request for correction to the Coast Guard with additional information, including additional subcontractor quotations and the workpapers that were used to prepare its bid. 4-S explained that the mistake resulted because it received the two omitted quotations by facsimile transmission during the height of last minute, pre-bid activity. In its haste to include the amounts indicated in the quotations for the base bid, it simply forgot to include the amount for mechanical work and tile work for additive item 1 in its total cost for that item. 4-S also asserted that for the base bid and the other four additive items, the firm added 10 percent for profit and overhead and would have included the same percentage in its bid for additive item 1. 4-S thus revised its request for correction and now requested that the bid for additive item 1 be increased by \$85,291 to \$110,891 (\$61,200 for the mechanical work, plus \$14,010 for the tile work, plus \$10,081 for profit and overhead (10 percent of \$100,810, its new unburdened total for additive item 1)) and that its total bid be increased by \$85,291 from \$2,534,200 to \$2,619,491.

The Coast Guard reviewed the additional information provided by 4-S and concluded that 4-S still had not provided clear and convincing evidence of its intended bid. The Coast Guard was concerned because neither tile work nor profit and overhead appeared on the worksheets. Further, the worksheets themselves did not in any way evidence the alleged error and the intended bid amount. The Coast Guard concluded that given that as corrected 4-S's allegedly intended bid was only \$7,513 (less than 1 percent) lower than the second low bid, 4-S's assertion that it left out the quotations was not sufficient to permit correction.¹ The Coast Guard also determined that the evidence was not clear and convincing that as corrected 4-S's bid would remain low.

A bidder who submits a bid containing a mistake runs the risk that the bid may not be corrected. However, a bidder may obtain upward correction of its bid prior to award if it submits clear and convincing evidence showing a mistake was made, the manner in which the mistake occurred, and the intended price. The closer the intended bid is to the next low bid, the more difficult it is to establish that it is the bid actually intended. Avanti Constr. Corp., B-229839, Mar. 14, 1988, 88-1 CPD ¶ 262. Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination unless there is no reasonable basis for the decision. Northwest Builders, B-228555, Feb. 26, 1988, 88-1 CPD ¶ 200.

In support of its claim for correction, 4-S submitted its worksheets and the subcontractor quotes it received while preparing its bid. The worksheets consist of a sheet on which 4-S entered its material, labor, and subcontract costs

¹The Coast Guard also questions 4-S's bid because, independent of the protester's claimed mistakes in the areas of mechanical work, tile work, and overhead and profit, 4-S used two electrical subcontractors, one for the base item and one for its additive items. In addition, the Coast Guard was concerned because, according to the agency, additive item 1 required the removal of roof asbestos and the subcontractor 4-S intended to use for asbestos removal work for its base bid did not separately price asbestos removal for additive item 1, while other asbestos subcontractors did so. Finally, the Coast Guard was concerned because 4-S's worksheets did not include any amount for bonds that were required by the solicitation. Because we find the Coast Guard's decision otherwise reasonable we have not addressed these points.

for all items by work division. In addition, there is a worksheet for each line item in the solicitation, that is, the base bid and the five additive items. 4-S's worksheets for additive item 1 show that 4-S included a line item for separate elements of the work, including a gypsum wall board ceiling; interior non-common wall partitions; single tier lockers; toilet partitions; toilet accessories; electrical work; and mechanical work. There is no entry for tile work. 4-S inserted a price next to each element with the exception of mechanical work. The total of these elements is the total that 4-S included in its bid for additive item 1. 4-S also provided its subcontractor quotes, including the quotations for the mechanical work and the tile work, and asserted that it would have used the same subcontractor for additive item 1 as it used for its base bid.


Based on our review of this evidence, we do not conclude that the Coast Guard's position that correction should be denied is unreasonable. While 4-S's worksheets for additive item 1 include a blank space for mechanical work, this evidence alone, given the closeness of 4-S's allegedly intended bid to the next low bid, is not sufficient to demonstrate that 4-S intended to include the \$61,200 subcontractor's quote it received for the mechanical work in its bid for additive item 1. Nor is the fact that 4-S used this subcontractor quotation for its base bid conclusive since a contractor is free to use different subcontractors for different work elements; in fact, 4-S itself used two electrical subcontractors, one for the base bid and one for the additive items. Further, 4-S's worksheets for additive item 1 do not even make any reference to, or provide a line on which to include figures for, the allegedly omitted overhead and profit and tile work.

The protester points out that it only selected subcontractors whose quotes were lowest, and that it proposed the same mechanical and tile subcontractors for the base work. These facts, 4-S argues, establish that it would have used the quotes it now proffers. Certainly the pattern of subcontractor selection throughout its bid is strong evidence that the firm would have included the low mechanical and tile work quotes. The question here, however, is whether the agency has acted reasonably in requiring more--some indication in the workpapers that 4-S selected particular subcontractors--to find clear and convincing evidence of the protester's intended bid. We do not believe that the quotations alone so clearly and convincingly establish what amounts for the omitted items 4-S intended to include in its bid for additive item 1 that the Coast Guard was required to allow correction of the bid.

A bidder may obtain correction even though, as in this case, the intended bid cannot be determined exactly, provided there is clear and convincing evidence that the bid would remain low after correction and the amount of the intended bid falls within a narrow range of uncertainty that is significantly below the next low bid. C Constr. Co., Inc., B-242717, June 6, 1991, 91-1 CPD ¶ 540. 4-S's bid does not qualify for correction under this standard. Since, as noted above, 4-S has not demonstrated that it intended to include the low quotation for the mechanical work, we cannot conclude that 4-S's bid as corrected would remain low.

Finally, since it is not clear that as corrected 4-S's bid would remain low, 4-S may not waive the alleged errors and perform at the initial bid price. Id.

The protest is denied.


for James F. Hinchman
General Counsel